

(c) Awards under this subpart may not exceed \$2,000,000, or be for more than three years, unless the Secretary provides a written explanation to the authorizing committees of both Houses of Congress and then, only after thirty days during which both Houses of Congress are in session. No funding for indirect costs, profits, or management fees shall be available for awards made under this subpart.

(d) The total value of any in-kind contributions used to satisfy a cost sharing requirement may not exceed 30 percent of the non-federal share of the total project costs.

[62 FR 64687, Dec. 9, 1997]

## PART 296—TECHNOLOGY INNOVATION PROGRAM

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### Subpart A—General

#### § 296.1 Purpose.

(a) The purpose of the Technology Innovation Program (TIP) is to assist United States businesses and institutions of higher education or other organizations, such as national laboratories and nonprofit research institutes, to support, promote, and accelerate innovation in the United States through high-risk, high-reward research in areas of critical national need within NIST's areas of technical competence.

(b) The rules in this part prescribe policies and procedures for the award and administration of financial assistance (grants and/or cooperative agreements) under the TIP. While the TIP is authorized to enter into grants, cooperative agreements, and contracts to carry out the TIP mission, the rules in this part address only the award of grants and/or cooperative agreements.

#### § 296.2 Definitions.

*Award* means Federal financial assistance made under a grant or cooperative agreement.

*Business or company* means a for-profit organization, including sole proprietors, partnerships, limited liability companies (LLCs), and corporations.

*Contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

*Contractor* means the legal entity to which a contract is made and which is accountable to the recipient, subrecipient, or contractor making the contract for the use of the funds provided.

*Cooperative agreement* refers to a Federal assistance instrument used whenever the principal purpose of the relationship between the Federal government and the recipient is to transfer something of value, such as money, property, or services to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the Federal government; and substantial involvement is anticipated between the Federal government and the

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recipient during performance of the contemplated activity.

*Critical national need* means an area that justifies government attention because the magnitude of the problem is large and the societal challenges that need to be overcome are not being addressed, but could be addressed through high-risk, high-reward research.

*Direct costs* means costs that can be identified readily with activities carried out in support of a particular final objective. A cost may not be allocated to an award as a direct cost if any other cost incurred for the same purpose in like circumstances has been assigned to an award as an indirect cost. Because of the diverse characteristics and accounting practices of different organizations, it is not possible to specify the types of costs which may be classified as direct costs in all situations. However, typical direct costs could include salaries of personnel working on the TIP project, travel, equipment, materials and supplies, subcontracts, and other costs not categorized in the preceding examples. NIST shall determine the allowability of direct costs in accordance with applicable Federal cost principles.

*Director* means the Director of the National Institute of Standards and Technology (NIST).

*Eligible company* means a small-sized or medium-sized business or company that satisfies the ownership and other requirements stated in this part.

*Grant* means a Federal assistance instrument used whenever the principal purpose of the relationship between the Federal government and the recipient is to transfer something of value, such as money, property, or services to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the Federal government; and no substantial involvement is anticipated between the Federal government and the recipient during performance of the contemplated activity.

*High-risk, high-reward research* means research that:

(1) Has the potential for yielding transformational results with far-ranging or wide-ranging implications;

(2) Addresses areas of critical national need that support, promote, and accelerate innovation in the United States and is within NIST's areas of technical competence; and

(3) Is too novel or spans too diverse a range of disciplines to fare well in the traditional peer-review process.

*Indirect costs* means those costs incurred for common or joint objectives that cannot be readily identified with activities carried out in support of a particular final objective. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose in like circumstances has been assigned to an award as a direct cost. Because of diverse characteristics and accounting practices it is not possible to specify the types of costs which may be classified as indirect costs in all situations. However, typical examples of indirect costs include general administration expenses, such as the salaries and expenses of executive officers, personnel administration, maintenance, library expenses, and accounting. NIST shall determine the allowability of indirect costs in accordance with applicable Federal cost principles.

*Institution of higher education* means an educational institution in any State that—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of

preaccreditation status, and the Secretary of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time (20 U.S.C. 1001). For the purpose of this paragraph (1) only, the term *State* includes, in addition to the several States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States. The term *Freely Associated States* means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

*Intellectual property* means an invention patentable under title 35, United States Code, or any patent on such an invention, or any work for which copyright protection is available under title 17, United States Code.

*Joint venture* means a business arrangement that:

(1) Includes either:

(i) At least two separately owned companies that are both substantially involved in the project and both of which are contributing to the cost-sharing required under the TIP statute, with the lead company of the joint venture being an eligible company; or

(ii) At least one eligible company and one institution of higher education or other organization, such as a national laboratory, governmental laboratory (not including NIST), or nonprofit research institute, that are both substantially involved in the project and both of which are contributing to the cost-sharing required under the TIP statute, with the lead entity of the joint venture being either the eligible company or the institution of higher education; and

(2) May include additional for-profit companies, institutions of higher education, and other organizations, such as national laboratories and nonprofit research institutes, that may or may not contribute non-Federal funds to the project.

*Large-sized business* means any business, including any parent company plus related subsidiaries, having annual revenues in excess of the amount

published by the Program in the relevant FEDERAL REGISTER notice of availability of funds in accordance with § 296.20. In establishing this amount, the Program may consider the dollar value of the total revenues of the 1000th company in Fortune magazine's Fortune 1000 listing.

*Matching funds or cost sharing* means that portion of project costs not borne by the Federal government. Sources of revenue to satisfy the required cost share include cash and third party in-kind contributions. Cash may be contributed by any non-Federal source, including but not limited to recipients, state and local governments, companies, and nonprofits (except contractors working on a TIP project). Third party in-kind contributions include but are not limited to equipment, research tools, software, supplies, and/or services. The value of in-kind contributions shall be determined in accordance with § 14.23 of this title and will be prorated according to the share of total use dedicated to the TIP project. NIST shall determine the allowability of matching share costs in accordance with applicable Federal cost principles.

*Medium-sized business* means any business that does not qualify as a *small-sized business* or a *large-sized business* under the definitions in this section.

*Member* means any entity that is identified as a joint venture member in the award and is a signatory on the joint venture agreement required by § 296.8.

*Nonprofit research institute* means a nonprofit research and development entity or association organized under the laws of any state for the purpose of carrying out research and development.

*Participant* means any entity that is identified as a recipient, subrecipient, or contractor on an award to a joint venture under the Program.

*Person* will be deemed to include corporations and associations existing under or authorized by the laws of the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

*Program* or *TIP* means the Technology Innovation Program.

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*Recipient* means an organization receiving an award directly from NIST under the Program.

*Small-sized business* means a business that is independently owned and operated, is organized for profit, has fewer than 500 employees, and meets the other requirements found in 13 CFR part 121.

*Societal challenge* means a problem or issue confronted by society that when not addressed could negatively affect the overall function and quality of life of the Nation, and as such justifies government attention.

*State*, except for the limited purpose described in paragraph (1) of this section, means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under the United States Housing Act of 1937.

*Subaward* means an award of financial assistance made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the legal agreement is called a contract, but does not include procurement of goods and services.

*Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided.

*Transformational results* means potential project outcomes that enable disruptive changes over and above current methods and strategies. Transformational results have the potential to radically improve our understanding of systems and technologies, challenging the status quo of research approaches and applications.

*United States owned company* means a for-profit organization, including sole proprietors, partnerships, limited liability companies (LLCs), and corporations, that has a majority ownership by individuals who are citizens of the United States.

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#### § 296.3 Types of assistance available.

Subject to the limitations of this section and § 296.4, assistance under this part is available to eligible companies or joint ventures that request either of the following:

(a) *Single company awards*: No award given to a single company shall exceed a total of \$3,000,000 over a total of 3 years.

(b) *Joint venture awards*: No award given to a joint venture shall exceed a total of \$9,000,000 over a total of 5 years.

#### § 296.4 Limitations on assistance.

(a) The Federal share of a project funded under the Program shall not be more than 50 percent of total project costs.

(b) Federal funds awarded under this Program may be used only for direct costs and not for indirect costs, profits, or management fees.

(c) No large-sized business may receive funding as a recipient or subrecipient of an award under the Program. When procured in accordance with procedures established under the Procurement Standards required by part 14 of Subtitle A of this title, recipients may procure supplies and other expendable property, equipment, real property and other services from any party, including large-sized businesses.

(d) If a project ends before the completion of the period for which an award has been made, after all allowable costs have been paid and appropriate audits conducted, the unspent balance of the Federal funds shall be returned by the recipient to the Program.

#### § 296.5 Eligibility requirements for companies and joint ventures.

Companies and joint ventures must be eligible in order to receive funding under the Program and must remain eligible throughout the life of their awards.

(a) A company shall be eligible to receive an award from the Program only if:

(1) The company is a small-sized or medium-sized business that is incorporated in the United States and does a